

**SUBSTITUTE FOR
SENATE BILL NO. 1313**

A bill to create a lien against real property for unpaid commercial real estate broker's commissions and services; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "commercial real estate broker's lien act".

3 Sec. 2. As used in this act:

4 (a) "Buyer" means a purchaser or lessee of a legal or
5 equitable interest in real estate.

6 (b) "Claim of lien" means a claim of a commercial real
7 estate broker's lien asserted under this act.

8 (c) "Commercial real estate" means real estate or an
9 interest in real estate that is not any of the following:

1 (i) Real estate zoned for single family use and on which no
2 building or structure is located.

3 (ii) Real estate on which 4 or fewer residential units are
4 located.

5 (iii) Real estate on which more than 4 residential units are
6 located if the units are single-family residential units,
7 including houses, condominiums, or townhouses in a subdivision or
8 condominium project, that are sold, leased, or otherwise conveyed
9 on a unit-by-unit basis.

10 (d) "Commercial real estate broker's lien" means a lien
11 created under this act.

12 (e) "Record" means to record with the register of deeds for
13 the county in which the commercial real estate is located.

14 (f) "Seller" means the equitable or legal owner or lessor of
15 an interest in real estate.

16 Sec. 3. A commercial real estate broker's lien is only
17 available to an individual licensed as a real estate broker under
18 article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to
19 339.2518. A commercial real estate broker's lien is not available
20 to an employee, agent, subagent, or independent contractor of a
21 licensed real estate broker.

22 Sec. 4. (1) A commercial real estate broker's lien attaches
23 to commercial real estate in favor of a real estate broker if all
24 of the following circumstances exist:

25 (a) The real estate broker has a written commission
26 agreement.

27 (b) The real estate broker is entitled to a commission under

1 the written commission agreement.

2 (c) Except as provided in subsections (3) to (8), the real
3 estate broker records a claim of lien before the actual
4 conveyance of the commercial real estate.

5 (2) Unless this act specifically provides otherwise, a
6 commercial real estate broker's lien attaches on the date the
7 claim of lien is recorded.

8 (3) Except as provided in subsections (4) to (6), when
9 payment of a real estate broker's commission is due in
10 installments, 1 or more of which are due after the conveyance of
11 the commercial real estate, a claim of lien for the payments due
12 after the date of the conveyance may be recorded after the date
13 of the conveyance and before the dates on which the payments are
14 due. A lien under this subsection is only effective against the
15 commercial real estate to the extent payment is still owed to the
16 seller by the buyer.

17 (4) If a real estate broker is owed a commission as a result
18 of a lease, the real estate broker may record a claim of lien any
19 time after the lease is signed. Except as provided in subsections
20 (5) and (6), a lien under this subsection attaches after both of
21 the following occur:

22 (a) The claim of lien is recorded.

23 (b) The lessee takes possession of the leased premises.

24 (5) If a real estate broker may be owed a commission in the
25 future as a result of an extension of the term or the expansion
26 of the leased premises under an existing lease, a commercial real
27 estate broker's lien attaches after both of the following occur:

1 (a) A claim of lien is recorded.

2 (b) The modification of the existing lease is confirmed in
3 writing.

4 (6) If written notice of the intent to enter into a lease
5 that includes a date on which the lease is intended to be signed
6 is personally served on a real estate broker at least 10 days
7 before the intended date of signing, the real estate broker shall
8 file a claim of lien before the intended date of signing.

9 (7) If a real estate broker has a written agreement with a
10 potential buyer to act as a buyer's agent, a commercial real
11 estate broker's lien attaches after both of the following occur:

12 (a) The buyer purchases or accepts the conveyance of the
13 commercial real estate.

14 (b) A claim of lien is recorded.

15 (8) If a real estate broker may be owed a commission in the
16 future as a result of an option to purchase commercial real
17 estate, the real estate broker may record a claim of lien at any
18 time after the option to purchase is signed and before the
19 transfer or conveyance pursuant to the exercise of the option. A
20 lien attaches under this subsection after both of the following
21 occur:

22 (a) The claim of lien is recorded.

23 (b) The real estate is transferred or conveyed pursuant to
24 the exercise of the option to purchase.

25 (9) A claim of lien shall contain all of the following:

26 (a) The name and the license number of the claimant.

27 (b) The name of the owner of the commercial real estate.

1 (c) The amount for which the lien is claimed.

2 (d) As an attachment, the legal description of the
3 commercial real estate on which the lien is being claimed.

4 (e) As an attachment, a copy of the written instrument on
5 which the claim for commission or fee is based.

6 (f) A statement that the information contained in the claim
7 of lien is true and accurate to the knowledge of the signer.

8 (g) The notarized signature of the real estate broker or a
9 person authorized to sign on behalf of the real estate broker.

10 (10) A claim of lien recorded under this section shall be
11 substantially in the following form:

12 CLAIM OF LIEN

13 [Name of Broker],	)	Claim of Commercial Real Estate
14	)	Broker's Lien
15 Broker-Claimant	)	
16	)	In the Office of the Register
17	)	of Deeds of _____
18	)	County, Michigan

19 The broker-claimant named above, whose real estate license
20 number is _____, and whose business address
21 is _____, Michigan,
22 claims a commercial real estate broker's lien under section 4 of
23 the commercial real estate broker's lien act and states:

24 1. The real property ("property") against which the lien is
25 claimed is located at _____,
26 _____ County, Michigan, and is legally described on

1 Exhibit A attached to this claim. The record owner ("owner") of
2 the property is _____.

3 2. On _____, the broker-claimant entered into
4 a written agreement with the (owner) (buyer) obligating the
5 (owner) (buyer) to pay a commission to the broker-claimant. A
6 copy of the agreement is attached as Exhibit B.

7 3. The broker-claimant, by its agents, provided services for
8 the (owner) (buyer) and is in compliance with the broker-
9 claimant's obligations under the written agreement referred to in
10 paragraph 2.

11 4. The amount of the commission or fee to which the broker-
12 claimant is entitled is _____.

13 5. _____ (a) The broker-claimant now claims a lien on the
14 property and all improvements to the property and against all
15 persons interested in the property in the amount of \$_____.

16 _____ (b) The broker-claimant claims a potential future lien
17 on the property and all improvements to the property and against
18 all persons interested in the property if there is a lease
19 extension or expansion.

20 _____ (c) The broker-claimant claims a potential future lien
21 on the property and all improvements to the property and against
22 all persons interested in the property if an option to purchase
23 the property is exercised. This lien is only effective if the
24 property is conveyed pursuant to the option to purchase; it may
25 otherwise be disregarded.

26 6. The information contained in this claim of lien is true
27 and accurate to the best knowledge of the signer.

1 [Name of Broker]
 2 By: _____
 3 Its Authorized Agent

4 Signed and sworn to before me in _____ County, Michigan,
 5 on _____, _____[year].

6 _____
 7 [Notary's name, county, acting
 8 in county, and date commission
 9 expires]

10 Note: This claim of lien is void and unenforceable unless
 11 recorded with the register of deeds of the county in which the
 12 real estate is located, as required by the commercial real estate
 13 broker's lien act.

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16 (11) Within 10 days of recording a claim of lien under this
 17 section, the real estate broker shall provide a copy of the claim
 18 of lien to the owner of record of the commercial real estate and
 19 to the party who signed the written commission agreement by
 20 mailing a copy of the claim of lien by registered or certified
 21 mail with return receipt requested to the address of the
 22 commercial real estate that is the subject of the claim of lien
 23 or by personal service. Mailing a copy of the claim of lien is
 24 effective as notice under this subsection when deposited in a

1 United States mailbox with postage prepaid. The commercial real
2 estate broker's lien is void and unenforceable if a copy of the
3 claim of lien is not served within the time and in the manner
4 required by this subsection.

5 (12) A claim of lien not recorded in compliance with this
6 section is void and unenforceable.

7 (13) A valid prior-recorded lien or mortgage on commercial
8 real estate has priority over a commercial real estate broker's
9 lien. A valid prior-recorded lien or mortgage includes, but is
10 not limited to, both of the following:

11 (a) A valid construction lien that is recorded after the
12 claim of lien is recorded and that relates back to a date before
13 the claim of lien is recorded.

14 (b) A lien securing revolving credit and future advances of
15 construction loans that is recorded before the claim of lien is
16 recorded.

17 (14) As used in this section, "lease" includes a sublease,
18 assignment of a lease, or modification of a lease.

19 Sec. 5. (1) If a claim of lien recorded under section 4
20 would otherwise prevent the closing of a transaction involving
21 commercial real estate, the parties to the transaction shall,
22 subject to subsection (2), establish an escrow account from the
23 proceeds of the transaction in an amount sufficient to satisfy
24 the lien. A party shall not refuse to close the transaction
25 because of the requirement of establishing an escrow account
26 under this subsection. The money shall remain in the escrow
27 account until the rights to the money have been determined by a

written agreement of the parties, a judgment or order by a court of competent jurisdiction, or any other method agreeable to the parties.

(2) An escrow account is not required under subsection (1) if either of the following circumstances exists:

(a) Alternative procedures are available that will allow the transaction to close and that are acceptable to all the parties to the transaction.

(b) The proceeds from the transaction are insufficient to satisfy all liens against the commercial real estate under this act.

(3) If an amount sufficient to satisfy a commercial real estate broker's lien is escrowed under subsection (1), the lien is extinguished and the real estate broker shall provide a release of lien substantially in the following form:

RELEASE OF LIEN

The undersigned is the claimant under a claim of commercial real estate broker's lien recorded on _____ [date] in the office of the register of deeds of _____ County, Michigan, at Liber _____, Page _____. The undersigned releases the lien on the following described property:

[Legal description]

[Name of Claimant]

By: _____

Its Authorized Agent

1 Signed and sworn to before me in _____ County, Michigan,
 2 on _____, _____[year].

3 _____
 4 [Notary's name, county, acting
 5 in county, and date commission
 6 expires]

7 Prepared By:

8 Return To:

9 Sec. 6. (1) A person claiming a commercial real estate
 10 broker's lien may bring an action to enforce the lien in the
 11 circuit court for the county where the commercial real estate is
 12 located by filing a complaint and affidavit that the claim of
 13 lien has been recorded.

14 (2) The plaintiff in an action under this section shall name
 15 as defendants all persons that, at the time the action is filed,
 16 have an interest in the commercial real estate that is the
 17 subject of the action that would be divested or impaired by the
 18 foreclosure of the lien.

19 (3) The complaint in an action under this section may
 20 include a claim on the contract from which the lien arises.

21 Sec. 7. (1) An action under section 6 shall be commenced
 22 within 1 year after the date the commercial real estate broker's
 23 lien attaches.

24 (2) Failure to commence an action within the applicable time
 25 period under this section extinguishes the lien. A later claim of
 26 lien for the same commission or services shall not be made and

1 shall not be the basis of an action filed under section 6.

2 Sec. 8. (1) If the court in an action under section 6 finds
3 that the plaintiff is entitled to the commercial real estate lien
4 and that the amount claimed has not been paid, the court may
5 enter a judgment ordering the sale of any interest in the
6 commercial real estate, or part of the commercial real estate, to
7 which the lien attaches. In the order of foreclosure sale, the
8 court shall set a period of redemption not exceeding 4 months.

9 The order of foreclosure sale shall be recorded. The sale shall
10 be conducted in the same manner as a sale on execution. The sale
11 is final, subject to the period of redemption, on the entry of an
12 order of confirmation by the court. On expiration of the period
13 of redemption, the grantee named in the deed is vested with all
14 right, title, and interest in the commercial real estate that was
15 subject to the lien. Redemption from a foreclosure sale is
16 complete on full payment of the amount in the judgment of
17 foreclosure. If the court determines that the proceeds of the
18 sale are insufficient to satisfy the judgment, the court may
19 enter a deficiency judgment against the person who signed the
20 written agreement to pay the real estate broker.

21 (2) The court in an action under section 6 shall award costs
22 to a prevailing plaintiff, including reasonable attorney fees,
23 court and litigation costs, and prejudgment interest.

24 Sec. 9. A written demand on behalf of the owner of
25 commercial real estate may be served on a person claiming a
26 commercial real estate broker's lien, demanding that an action be
27 commenced to enforce the lien or that an answer be filed in an

1 action pending between the owner and the lien claimant. If the
2 action is not commenced or the answer is not filed within 30 days
3 after service of the demand, the lien is extinguished without
4 further action. Service of the demand may be by registered or
5 certified mail, return receipt requested, or by personal service.

6 Sec. 10. If a claim of lien has been recorded under this act
7 and a condition occurs that prohibits the real estate broker from
8 receiving compensation under the terms of the written agreement
9 on which the claim is based, the real estate broker shall provide
10 a release of lien under section 5 to the owner of record within
11 10 days after a written demand by the owner of record or the
12 owner's agent.

13 Sec. 11. If a claim of lien recorded under this act has been
14 paid, or if an action to enforce the lien has not been commenced
15 within the time limitations of section 7, the real estate broker
16 shall provide a release of lien under section 5 within 5 days
17 after a written demand by the owner of record or the owner's
18 agent.

19 Sec. 12. (1) If a claim of lien recorded under this act has
20 been partially paid, the real estate broker shall provide a
21 partial satisfaction and release of lien in the form provided in
22 subsection (2) within 5 days after written demand by the owner of
23 record or the owner's agent.

24 (2) A partial satisfaction and release of lien under this
25 section shall be in substantially the following form:

26 PARTIAL SATISFACTION AND RELEASE OF LIEN

7 The claimant has been paid \$_____, a portion of the
8 amount of the lien. The remaining amount of the lien is \$_____.

15 [Name of Claimant]
16 By: _____
17 Its Authorized Agent

20 _____
21 [Notary's name, county, acting
22 in county, and date commission
23 expires]

25 Return To:

1 Sec. 13. A subsequently recorded mortgage has priority over
2 a commercial real estate broker's lien if the mortgagee did not
3 have actual or constructive knowledge of the lien at the time the
4 mortgagee advanced money under the mortgage.

5 Sec. 14. This act applies to a written commission agreement
6 signed after the effective date of this act.